ACTION FOR WORK AND LABOUR—IDENTITY OF THE PERSON TO WHOM CREDIT WAS GIVEN WITH THE DEFENDANT ON THE RECORD.

SEWELL v. EVANS.—RODEN v. RYDE.

Two cases were decided by Court of Queen's Bench in last Easter term that will have considerable influence on the fate of future actions for work and labour. One was determined on the authority of the other, and both went to negative an alleged necessity for proving the identity of the person, whose liability to the plaintiff in the particular action is established, with the defendant on the record;—in other words, with the person on whom process has been served, who appears to that process and defends the action. They are, however, far from conclusive against the necessity for such proof in many cases that can be readily imagined, nay, it may fairly be doubted whether they do not establish the necessity for such proof when the handwriting of the defendant has not been proved.

In *Sewell* v. *Evans*, an action was brought by an executrix against the acceptor of a bill of exchange, and in the declaration there was a count for goods sold and delivered. At the trial, which took place before Lord Denman, at the sittings in London, after Michaelmas term 1842, proof was shewn of the delivery of goods to the amount of 27*l.* to one William Serle Evans, which was the name of the person who was defendant on the record; and a witness who had known a William Serle Evans for years, and had introduced that person to the plaintiff's testator (a woollen-draper), proved that person's handwriting to a letter addressed to the testator, acknowledging the receipt of goods. It was objected, on the part of the defendant, that the plaintiff was bound to shew, that the William Serle Evans, to whom the delivery was proved, and whose handwriting to the letter was proved, was the person defending the action. The learned judge overruled the objection, and a verdict passed for the plaintiff, upon the count for goods sold. The matter was brought before the full court, on a motion for a new trial, but cause was not shewn, on the ground that the case was disposed of by the decision in *Roden* v. *Ryde*, which had been pronounced the day before.

In *Roden* v. *Ryde*, an action was brought by an indorsee against the acceptor of two bills of exchange. At the trial, a banker's clerk, in the London and Westminster Bank, was called for the plaintiff, who proved the handwriting of the acceptor, John Thomas Ryde, from having been in the habit of paying across the counter cheques by a party bearing the same name; and that a person of the same name kept an account at the London and Westminster Bank, but there was no proof of the identity of that person with the defendant on the record. The learned judge thought the evidence sufficient. Verdict for the plaintiff. A rule *nisi* for a nonsuit having been obtained, the Court called on Mr. Wordsworth, who had obtained it, to support it. He relied on several cases, of which *Logan* v. *Allder*, 3 Tyr. 557, a. was one. There Mr. Baron Bolland said, "The rule of law is the same in civil as in criminal proceedings. Now, suppose a person to be tried for forging the signature of W. R. A. of H. to a bond, and that the subscribing witness said, 'I saw that bond signed at the Inn I keep, but I never saw the party executing before or since,' could the case against that prisoner be left to the jury?" To this citation Mr. Justice Patteson answered, "The witness here does know the party who accepted the bill, and has often seen him. The question is, whether he is the same with the defendant on whom process was served. Now, in criminal cases, the prisoner is in court, so that the witness may be asked whether he was the person whom he saw write, and this peculiar difficulty could not arise. Suppose, on the other hand, this proof of identity to be necessary, how, in an action against the executors founded on handwriting of their testator, could the identity be proved?"

Lord Denman, with whom the other judges concurred, gave judgment as follows:—"I think the doubt, in this case, has been raised by the decision of the Court of Exchequer in *Whitlock* v. *Musgrove*, which does not necessarily create it. There the defendant was a marksman, which may have rendered greater strictness of proof necessary. And in *Jones* v. [illegible] that the defendant's name, Hugh Jones, was very common in the district. These, and many similar circumstances, might create a necessity for some proof of identity. But, in ordinary cases, I cannot conceive any necessity for calling a witness for the mere purpose of identifying the party who is charged on his handwriting with the defendant in the suit; and I question whether a witness was ever called simply with that object, except in the case of *Jones* v. *Jones* on the new trial. The name of John Thomas Ryde is not a common one, nor was any reason suggested for supposing the existence of two of the name. I think the observation of Baron Bolland in *Logan* v. *Allder* has been sufficiently shewn, by my brother Patteson, to have no bearing on this case. In *Whitelock* v. *Musgrove*, Lord Lyndhurst is reported to ask, 'Why should the onus of proving a negative, viz. that he is not the person named in the note, be thrown on the defendant?' I cannot but think the answer is, because it is so easy for him to disprove the identity; and because great danger would be incurred by any one who should so abuse the process of a court, as knowingly to serve a wrong party with process. The Court would probably exercise its jurisdiction for contempt in a very serious manner; and it is scarcely conceivable that a fraud of so daring a character, and so easily detected, would occur to any one to commit. The constant practice of the Courts, from the earliest period, proves, indeed, that no such frauds have been discovered, for no doubt on the subject existed until lately. It is unfortunate that such a doubt was ever raised." The rule was accordingly discharged.

Now, we venture to think that so much of this judgment as refers to the punishment that would be inflicted for abuse of the process of a court is altogether beside the question, and for the very obvious reason, that the possibility of such a punishment being inflicted did not avail for dispensing with the proof of identity in *Whitelock* v. *Musgrove* and *Jones* v. *Jones*. The judgment in *Roden* v. *Ryde* proceeds on the fact that the defendant was "charged on his handwriting;" so, in *Sewell* v. *Evans*, the handwriting of a person named Evans was proved. But, how will it be when there is no document in the handwriting of the real debtor? When the handwriting of the defendant is to be proved, there can be little doubt that a witness will be brought forward who knows the handwriting of the defendant on the record. It is difficult to suppose fraud in such a case. But when handwriting does not form part of the proof, the case is different, and the fact that *Roden* v. *Ryde* and *Sewell* v. *Evans* were decided on the ground of handwriting proved will be urged as a reason why proof of identity must be given when handwriting is not proved. In an action for work and labour in the shape of repairs done to a house in which the person ordering the repairs by word of mouth does not live, the evidence might be this—a person of the same names as the defendant gave the orders, superintended the execution of the repairs, and was the owner of the house. The cases reported in this paper would not be an answer to the demand of proof that the defendant on the record was the person who gave the orders, for the parallelism of the several schemes of facts would fail. It is material, therefore, to provide the means of proving the identity of the person sheun to be the debtor with the person who defends the action.

The proper way will be for one of the plaintiff's witnesses, who at the trial will prove the orders, or the superintendence of the execution of the orders, by a certain person, to accompany the man who serves the process on the defendant, and then to identify him with the person whom he saw giving the orders and superintending the execution of them.

We have thought it right to lay these cases, which, at the first blush, may appear to be strictly lawyers' cases, before the reader, because experience has shewn us that the failure of actions brought by tradesmen frequently arises from their ignorance, at the time when a debt is contracted, of the proofs that will be required from them when they seek to establish it.

A FACT.—Brick makers have become quite scarce; as not a labourer can be found, since the growth of temperance, who will undertake to *wet his clay!*—

OLD ENGLISH AND MODERN FURNITURE.

In no respect has there been so signal an improvement in modern times as in the ordinary domestic furniture. The artizan now enjoys luxuries of this kind, which were but three centuries ago beyond the reach of the crowned head. Heavy tables, formed of planks laid upon trestles, massy oak benches or stools for seats, and floors covered with straw formed the accommodation which satisfied the princes and prelates of our early history. Even in the time of Elizabeth, the comfort of a carpet was seldom felt, and the luxury of a fork wholly unknown.

But though the balance in point of comfort is infinitely in favour of modern upholstery, on the other hand the splendour of our hangings and bed furniture is far inferior to that of the earlier periods. Carved and inlaid bedsteads with hangings of cloth of gold, embroidered with heraldic badges; blue velvet powdered with silver lions; black satin, with gold roses and escutcheons of arms; tapestry of cloths of gold and silver for hangings on the walls;—these are pomps and vanities occurring in every page of the elder time—and no doubt the effect must have exceeded in magnificence anything we see or hear of in the present day.

Although there are no models for our imitation in the furniture of an early English house, yet in the age of Elizabeth and her immediate successors, we meet with a highly rich and elegant style of moveables, capable of easy adaptation to all the luxurious wants of our most fastidious Sybarites. The couches and settees of carved and twisted ebony, the velvet and damask cushions, piled upon one another like our ottomans, the canopied hangings, the ebony and ivory, or inlaid cabinets, elaborately carved oaken buffets, tables spread with velvet or damask, the great folding screen covered with figured cloths, or stamped leather, or needle-work, and the embossed andirons—these are admissible in the present day; and the elegance of no modern boudoir would be disparaged, or its comforts diminished, by their introduction. And though there may appear some anachronism in the application of furniture of the age of the sixteenth century to buildings of the thirteenth or fourteenth, yet this is fairly excusable of such perishable articles, and the associations connected with the one harmonize sufficiently with the other. Such a style of furniture is, at all events, infinitely more appropriate than our modern upholstery. What a disagreeable rebuff have our highly-wrought feelings sometimes experienced, when, on entering the arched porch of the Gothic abbey or embattled castle, and penetrating its vaulted galleries, we have found ourselves in a room fitted up in all the flimsy frippery of a Brighton or Cheltenham lodging-house, with marble chimney-pieces from Leghorn, spindle-shanked rosewood chairs from Oxford-street, Grecian sofas, Italian cornices, and French chiffoniers!

We are, however, pleased to be able to trace a growing improvement in the taste of the furniture of our living apartments, and a predilection for the rich and elegant designs of the Elizabethan age. Already there is a great and constant demand for its carved cabinets, scrolled chairs, tapestried hangings, and figured velvet cushions; and France and Germany are ransacked for these articles in order to restore to our ancient manor-houses and Tudor mansions their appropriate internal fashion of attire. Our upholsterers (or rather, we beg their pardon, *decorators*) are now imitating the fan-vaulted canopies of Queen Bess; and many a carver is employed in framing seats after the model of the "great Turkey leather elbow chair, with the tapestried cushions," which accommodated the person of his "most sacred majesty" at the castle of Tillietudlem. In short, though the *wisdom* of our ancestors is rapidly going out of fashion, it is some consolation that we are becoming daily more and more alive to the correctness of their *taste*.

POTATO PAINT.—Take a pound of potatoes skinned and well baked, bruise them in three or four times their weight of boiling water, and then pass them through a hair sieve. Add two pounds of chalk in fine powder, previously mixed with double the weight of water, and stir the whole well together. This mixture will form a glue. To it any colouring powder may be added, even that of brick, or soot, for painting gate-posts, &c. [illegible] are exposed to the action of the air.